

Exhibit 39

Deposition of Roger D. Blair (December 9,
2017) (excerpted)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF

ROGER D. BLAIR, Ph.D., VOL. II

Orlando, Florida

December 9, 2017

7:59 a.m.

Reported By:
Dawn A. Hillier, RMR, CRR, CLR
Job No. 52574

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<p style="text-align: right;">240</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 ATTORNEYS FOR PLAINTIFF:</p> <p>4</p> <p>5 COHEN MILSTEIN SELLERS & TOLL, PLLC</p> <p>6 1100 New York Avenue, NW, Suite 500</p> <p>7 Washington, D C 20005</p> <p>8 BY: DANIEL H SILVERMAN, ESQ</p> <p>9 dsilverman@cohenmilstein.com</p> <p>10 - and -</p> <p>11</p> <p>12 BERGER & MONTAGUE, P C</p> <p>13 1622 Locust Street</p> <p>14 Philadelphia, Pennsylvania 19103-6305</p> <p>15 BY: PATRICK F MADDEN, ESQ</p> <p>16 pmadden@bm.net</p> <p>17</p> <p>18 ATTORNEYS FOR DEFENDANT:</p> <p>19</p> <p>20 BOIES SCHILLER FLEXNER, LLP</p> <p>21 1401 New York Avenue, NW</p> <p>22 Washington, D C 20005</p> <p>23 BY: NICHOLAS WIDNELL, ESQ</p> <p>24 nwidnell@bsflp.com</p> <p>25 RORY SKAGGS, ESQ</p> <p>rskaggs@bsflp.com</p> <p>ALSO PRESENT:</p> <p>Isabelle Mercier, WME IMG</p> <p>Dr Christine Durrance</p> <p>Francois Mignon, Videographer</p>	<p style="text-align: right;">242</p> <p>1 THE VIDEOGRAPHER: Here begins media unit</p> <p>2 number five in day two of the continued deposition</p> <p>3 of Roger D. Blair being taken on December 9th, 2017</p> <p>4 at approximately 7:59 a.m.</p> <p>5 Will the court reporter please swear in the</p> <p>6 witness?</p> <p>7 ROGER D. BLAIR, Ph.D.,</p> <p>8 was called as a witness, and having first been duly</p> <p>9 sworn, was examined and testified as follows:</p> <p>10 THE WITNESS: I do.</p> <p>11 COURT REPORTER: Thank you.</p> <p>12 DIRECT EXAMINATION (continued)</p> <p>13 BY MR. SILVERMAN:</p> <p>14 Q Welcome back. And good morning.</p> <p>15 A Good morning.</p> <p>16 Q I'd like to turn to paragraph 32 of your</p> <p>17 report where you write -- there, you're talking about</p> <p>18 the right of first refusal clause in Zuffa's contracts.</p> <p>19 And you say that [as read]: Seeing as a way of</p> <p>20 gathering market intelligence, the right of first</p> <p>21 refusal is pro competitive as it resolves uncertainty.</p> <p>22 Can you tell me what analysis you've done to</p> <p>23 determine whether the right of first refusal is pro</p> <p>24 competitive?</p> <p>25 A You meant empirical research?</p>
<p style="text-align: right;">241</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 WITNESS - ROGER D BLAIR, Ph D (continued) 242</p> <p>4 DIRECT EXAMINATION BY MR SILVERMAN (continued) 242</p> <p>5 CERTIFICATE OF OATH 363</p> <p>6 REPORTER'S CERTIFICATE 364</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 Exhibit 5 Fourth Circuit Court of Appeals 246</p> <p>11 opinion, M&M Medical Supplies and</p> <p>12 Service, Inc v Pleasant Valley</p> <p>13 Hospital</p> <p>14 Exhibit 6 PowerPoint presentation entitled 249</p> <p>15 Presentation of Observations Based</p> <p>16 on MMA Data by Roger D Blair, Ph D</p> <p>17 Exhibit 7 2010 Horizontal Merger 272</p> <p>18 Guidelines</p> <p>19</p> <p>20 Exhibit 8 GBP000001 320</p> <p>21</p> <p>22 Exhibit 9 GBP000002 320</p> <p>23</p> <p>24 Exhibit 10 Expert Report of Roger D Blair, 325</p> <p>25 Errata Sheet, December 7th, 2017</p> <p>Exhibit 11 Expert report of Robert H Topel 338</p> <p>REPORTER'S KEY TO PUNCTUATION:</p> <p>-- At end of question or answer references</p> <p>interruption</p> <p>References a trail-off by the speaker</p> <p>No testimony omitted</p> <p>"Uh-huh" "Um-hum" References affirmative sound</p> <p>"Huh-uh" "Um-um" References negative sound</p>	<p style="text-align: right;">243</p> <p>1 Q Or any analysis, yeah. Either empirical or</p> <p>2 otherwise.</p> <p>3 A Well, what I -- well, I didn't do empirical</p> <p>4 research. But what I summarized in -- you know, in that</p> <p>5 statement, is that there are situations in which, you</p> <p>6 know, the parties that are negotiating may not know what</p> <p>7 the market alternatives are. They may not know what</p> <p>8 the -- you know, one side or the other may not know.</p> <p>9 And, you know, one way of finding this out would be</p> <p>10 through a right of refusal so that the -- you can allow</p> <p>11 the other party to essentially get offers which</p> <p>12 reflect -- ultimately will reflect market values or some</p> <p>13 approximation of market values.</p> <p>14 And then when you bring that back, then the</p> <p>15 other party has some information that it wouldn't have</p> <p>16 otherwise. And, you know, and that perfection of the</p> <p>17 information available to the parties that are</p> <p>18 negotiating makes it -- you know, is basically</p> <p>19 beneficial in a social welfare sense because you're not</p> <p>20 sort of wandering around trying to discover what the</p> <p>21 right terms should be and, you know, and that's -- as I</p> <p>22 summarized, it's -- you know, this is a way of acquiring</p> <p>23 market intelligence that, you know, might be difficult</p> <p>24 to get otherwise.</p> <p>25 Q So, is it fair to say that's an analysis based</p>

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<p style="text-align: right;">244</p> <p>1 on economic theory?</p> <p>2 A Yes.</p> <p>3 Q Other than that analysis based on economic</p> <p>4 theory, have you -- have you done any investigation of</p> <p>5 the record to determine whether that theory applies to</p> <p>6 Zuffa's -- Zuffa's right-to-match clause?</p> <p>7 A Well, I mean, the theory applies in, you know,</p> <p>8 in any situation where, you know, the, you know, market</p> <p>9 values are -- you know, you can't observe the market</p> <p>10 values in -- you know, in -- they're available in, you</p> <p>11 know, simpler circumstances. So, for example, you know,</p> <p>12 I can find out what the market value is of a gallon of</p> <p>13 gasoline pretty easily because there are posted prices</p> <p>14 and, you know, you can find that out pretty readily.</p> <p>15 But there are other values that are difficult</p> <p>16 to discover. And, you know, to the extent that you</p> <p>17 don't know them, you know, this practice, if you will,</p> <p>18 or is a way of gathering that information. And, you</p> <p>19 know, that's going to apply, you know, fairly generally.</p> <p>20 So, I mean, I can't -- I mean, I guess that's basically</p> <p>21 all I can say about that in response to your question.</p> <p>22 Q Is it your opinion that a right of first</p> <p>23 refusal is always pro competitive in every situation?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 THE WITNESS: Well, you know, this is, like,</p>	<p style="text-align: right;">246</p> <p>1 (Exhibit 5 was marked.)</p> <p>2 BY MR. SILVERMAN:</p> <p>3 Q I'm handing you what's been marked as Blair</p> <p>4 Exhibit 5. And it is a printout of a Fourth Circuit</p> <p>5 Court of Appeals opinion, M&M Medical Supplies and</p> <p>6 Service, Inc. v. Pleasant Valley Hospital.</p> <p>7 Is this one of the cases we were talking about</p> <p>8 yesterday in which you offered an opinion on behalf of</p> <p>9 the plaintiffs?</p> <p>10 A Yes, I believe so.</p> <p>11 Q And if you turn to page five of the opinion,</p> <p>12 the Court -- the Court -- this is the Fourth Circuit</p> <p>13 writing, writes [as read]: M&M has submitted the</p> <p>14 affidavit of its expert economist Roger Blair of proof</p> <p>15 of both the relevant market and the exercise of monopoly</p> <p>16 power.</p> <p>17 Is the -- is this opinion accurately stating</p> <p>18 that you submitted an affidavit in that case for the</p> <p>19 plaintiffs with an opinion on both the relevant market</p> <p>20 and the exercise of monopoly power?</p> <p>21 A I assumed that this is-- and this is quite a</p> <p>22 while ago. Did you notice what the date was on this?</p> <p>23 Q I believe it was -- this is 1991, this</p> <p>24 opinion.</p> <p>25 A Okay. So, of course, you know, this is a</p>
<p style="text-align: right;">245</p> <p>1 you know, when we had a question like this</p> <p>2 yesterday. You know, for me to agree to that or to</p> <p>3 say that it's always, that means that there's no --</p> <p>4 absolutely no exceptions to that. And, you know,</p> <p>5 and that would -- for me to answer that question,</p> <p>6 you know, I'd have to sort of sort through every</p> <p>7 conceivable circumstance. I can't do that sitting</p> <p>8 here.</p> <p>9 BY MR. SILVERMAN:</p> <p>10 Q So you said that this theory is going to apply</p> <p>11 fairly generally. Can you give me any circumstance</p> <p>12 where it wouldn't apply?</p> <p>13 A Not offhand, no.</p> <p>14 Q Have you quantified the pro competitive --</p> <p>15 done any analysis to quantify the pro competitive effect</p> <p>16 of the right of first refusal -- strike that.</p> <p>17 Have you done any analysis to quantify the pro</p> <p>18 competitive effect of Zuffa's right-to-match clause?</p> <p>19 A No, I have not.</p> <p>20 Q And is it your understanding that Zuffa's</p> <p>21 right-to-match clause applies to all fighters under UFC</p> <p>22 contracts, not just young and entry-level -- or</p> <p>23 entry-level fighters?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 THE WITNESS: I think that's right.</p>	<p style="text-align: right;">247</p> <p>1 quarter of a century ago. I mean, I know that --</p> <p>2 "know," in quotes, that I was retained on behalf of the</p> <p>3 plaintiff, and that, you know, whether I submitted a</p> <p>4 report or an affidavit, you know, I wouldn't remember</p> <p>5 this point.</p> <p>6 I know that one of the issues in this -- in</p> <p>7 this matter was the market definition. And, I guess</p> <p>8 this was, you know, monopolization by the hospital with</p> <p>9 respect to some aspect of durable medical equipment.</p> <p>10 But I don't really remember, you know, the specific</p> <p>11 details of that. Although I mean, I remember this</p> <p>12 generally, but, you know, I'm not suggesting that I</p> <p>13 don't remember that I participated in this case, but,</p> <p>14 you know, the specifics are not as crystal clear as they</p> <p>15 might have been 25 years ago.</p> <p>16 Q Have you opined on relevant market and</p> <p>17 monopoly or market power in other cases?</p> <p>18 A You know, I'm sure I have.</p> <p>19 Q At page -- for the record, that other quote</p> <p>20 was on page five of the printout. But page -- star six</p> <p>21 of the actual opinion.</p> <p>22 And on star seven, page star seven of the</p> <p>23 opinion, the court writes [as read]: Dr. Blair also</p> <p>24 states that the equipment company has exercised monopoly</p> <p>25 power in the market. He says, Pleasant Valley Home</p>

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